

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY SCITUATE, MASSACHUSETTS 02066 (781) 545-8716



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<u>DECISION ON APPLICATION FOR COMPREHENSIVE PERMIT</u> G.L. c. 40B, §§20-23; SCITUATE COMPREHENSIVE PERMIT RULES

APPLICANT:

DICHRISDA, LLC

PROPERTY:

44 JERICHO ROAD

DATE:

MARCH 20, 2008

I. PROCEDURAL HISTORY

- a. <u>The Application</u>. This matter concerns the application of Dichrisda, LLC (the "Applicant") for a Comprehensive Permit under M.G.L. Ch. 40B, §§ 20-23 and the Scituate Zoning Comprehensive Permit Rules to allow the construction of a 24 unit condominium building located at 44 Jericho Road (hereinafter, the "Property" or "Pier 44"). The Property is located on the harborfront. The proposed building would consist of a first floor parking garage with three residential stories above, and would consume nearly all of the usable area of the Property.
- b. <u>The Public Hearing</u>. The application was received on December 19, 2007. A duly noticed public hearing was commenced on January 10, 2008 and continued without objection to January 31, 2008 and then to March 6, 2008. The hearing was closed on March 6, 2008.
- c. Prior Related Proceedings. Prior to the submission of the Comprehensive Permit Application, the Applicant had submitted a special permit application for a similarly sized 22-unit condominium complex on the Property. The special permit application proposed no affordable housing. By decision dated August 18, 2006, the Board denied the special permit application. The Applicant appealed the Board's denial to the Plymouth County Superior Court, raising a number of claims. The litigation between the parties featured a variety of procedural maneuvers until the Board finally moved to remand the matter so as to address the perceived procedural defects that the Applicant had alleged. Although the Applicant opposed the remand, the Court, on August 28, 2007, granted the Board's Motion, requiring that a new hearing be held. The remand hearing commenced on October 25, 2007 and was continued to January 10, 2008 and then to January 31, 2008. The Applicant did not actively participate in the remand proceedings and, by decision dated March 20, 2008, the Board denied the application again.
- d. <u>Regulatory Framework.</u> At the initial public hearing, the Board and the Applicant discussed the applicability of 760 CMR 31.07(1)(h) (the "Regulation"), which was adopted to prevent predatory developers from using the provisions of c. 40B to extort approvals for

conventional development on the same site. The Regulation's plain terms vest a presiding zoning board with the power to deny or conditionally approve a project with impunity if less than 12 months have elapsed between the disposition of a prior conventional application and the submittal of a comprehensive permit application. On Friday, February 22, 2008, DHCD substantially amended all of its c. 40B regulations. While the Regulation remains generally intact, it has been renumbered as 760 CMR 56.03(7), which defines a prior "Related Application" as follows:

Related Applications

For the purposes of this subsection, a related application shall mean that less than 12 months has elapsed between the date of application for a Comprehensive Permit and any of the following:

- (a) the date of filing of a prior application for a variance, special permit, subdivision or other approval related to construction on the same land if that application was for a prior project that was principally non-residential in use, or if the prior project was principally residential in use, if it did not include at least 10% SHI Eligible Housing units;
- (b) any date during which such an application was pending before a local permit granting authority;
- (c) the date of disposition of such an application (including all appeals); or
- (d) the date of withdrawal of such an application.

An application shall not be considered a prior application if it concerns insubstantial construction or modification of the preexisting use of the land.

Under 760 CMR 56.03(1)(e), a Board may deny a prior Related Application. The Board expressed to the Applicant that it was potentially willing to consider foregoing the exercise of its rights under the Regulation, provided that the Applicant provide a revised plan that reduces the bulk of the building in a manner that would allow it both to be better assimilated into the Scituate harborfront and to address important safety concerns. Unfortunately, the Applicant offered only minor design revisions, failing to address the core concerns of the Board.

II. FINDINGS AND DECISION

The Board finds that the prior special permit application constitutes a prior Related Application, as defined under 760 CMR 56.03(7). The Board also finds that the Applicant did not provide an adequate rationale to warrant a waiver of its rights to deny the Comprehensive Permit Application pursuant to its rights under 760 CMR 56.03(1)(e).

¹ Under the Transitional Rules, the new version of the Regulations is retroactive.

Accordingly, for the foregoing reasons and pursuant to 760 CMR 56.03(1)(e), by Motion of Albert Bangert, seconded by Sara Trezise, the Board unanimously voted to deny the Application.

Albert Bangert, seconded by Sara Trezise, the Board unanimously voted to deny the pplication.
ZONING BOARD OF APPEALS
AlBanger
Albert Bangert, Chairman
Samt Laz
Sara Trezise
Brian Sullivan
Concurring:
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Edward Tibbetts, Associate Member
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Filed with the Town Clerk on 41108

This Special Permit/Finding will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County Registry of Deeds after the appeal period of twenty (20) days.

Peter Morin, Associate Member

Any appeal of any decision of the Zoning Board of Appeals may be made pursuant to M.G.L. Chapter 40B, §§20-23, and shall be filed within twenty (20) days of the date of the filing of the decision with the Town Clerk.